

ISHMAEL GUERRA

IBLA 76-634

Decided July 26, 1976

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer filed on drawing entry card.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located where called for on the card.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: First Qualified Applicant

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the state in which the parcel of land is located.

APPEARANCES: Ishmael Guerra, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ishmael Guerra filed a drawing entry card for parcel No. 1004 listed in the monthly list of lands available to simultaneous oil and gas leasing, and his offer was drawn first. The Nevada State Office, Bureau of Land Management, rejected the offer because appellant failed to include the name of the state in which the parcel of land was located.

Appellant contends in his statement of reasons that his entry card was in fact complete and that the State of Nevada was included on the card. Appellant complains that he was notified on April 28, 1976, that he had been the successful drawee. Then, on May 7, 1976, he was informed that his offer had been rejected. Appellant urges that a drawee should not be classified a winner and then have the offer rejected. He states that he should have been informed of the rejection at the time of the drawing.

[1] 43 CFR 3112.2-1(a) provides:

Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. * * * [Emphasis added.]

BLM Form 3112-1 (May 1974) was designated as the correct form of lease offer for simultaneous filing by notice published in the Federal Register, 34 F.R. 24523 (1974). That same notice contained this statement:

Failure to complete any part of the card will disqualify the applicant for participation in the drawing and will result in the retention of the \$ 10 filing fee by the Federal Government as a service charge.

We also note that in a widely publicized Instruction Memorandum, IM 75-194, dated April 25, 1975, the Associate Director, Bureau of Land Management, lists certain procedural changes in the processing of simultaneous oil and gas lease offers. The Instruction Memorandum specifically states that the entry card of a successful drawee will be rejected, subject to the right of appeal, if the drawee has failed to complete the entry card by omitting the state.

The file in the case includes appellant's drawing entry card. Examination of this card reveals that appellant did not provide the name of the state in which the parcel was located. In Albert E. Mitchell, III, 20 IBLA 302 (1975), the Board found that the regulations and Federal Register notice make it clear that no mistakes

will be permitted in completing the drawing entry card. On the basis of 43 CFR 3112.2-1(a), the Federal Register notice and the BLM Instruction Memorandum IM 75-194, a simultaneous oil and gas lease offer must be rejected where the offeror does not include the name of the appropriate state in the designated space on the card. Ray Granat, 25 IBLA 115 (1976).

[2] The fact that appellant was first notified that he was a successful drawee and later informed that his offer was rejected is irrelevant. Under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), when the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. McKay v. Wahlenmaier, 226 F.2d 35, 47 (D.C. Cir. 1955). Appellant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a). John R. Mimick, 25 IBLA 107 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

